SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 537

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

INTER-MOUNTAIN LIFE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

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A [Caption omitted.]

1 Before United States Board of Tax Appeals

Docket No. 20997

INTER-MOUNTAIN LIFE INSURANCE CO., PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appearances: For petitioner: Abram R. Serven, Esq., Guy Patten, Esq. For respondent: Jas. C. Maddox, Esq.

Docket entries

1926
Nov. 1—Petition received and filed. Taxpayer notified.
Nov. 2—Copy of petition served on general counsel.
Dec. 31—Answer filed by general counsel.

1927
Jan. 27—Copy of answer served on taxpayer—assigned General Calendar.

1928
Sept. 26—Hearing set Nov. 13, 1928.
Oct. 17—Motion for transfer to San Francisco, Calif., circuit calendar filed by taxpayer.
Oct. 17—Notice of appearance of Abram R. Serven as counsel for taxpayer filed.
Oct. 18—Motion granted.

1929
Feb. 11—Motion for leave to file amended petition filed by taxpayer, amendment tendered.
Feb. 13—Motion granted.
Feb. 15—Copy of motion and amended petition served on general counsel.
April 16—Answer to amended petition filed by general counsel. 4/17/39 copy served.
April 25—Motion to place on the Reserve Calendar filed by taxpayer. 4/26/29 granted.

2 1932
July 29—Hearing set Nov. 16, 1932.
Nov. 16—Hearing had before Mr. Sternhagen on merits. Submitted. Amendment to answer received—served. Judgment for petitioner under Rule 50. Stipulation of facts filed.
Nov. 26—Transcript of hearing Nov. 16, 1932 filed.

1933
March 28—Notice of settlement filed by general counsel.
March 31—Hearing set April 26, 1933, on settlement.
April 3—Consent to settlement filed by taxpayer.
April 8—Judgment entered—John M. Sternhagen, Division 10.

1933
July 3—Petition for review by U. S. Circuit Court of Appeals, 10th Circuit, with assignments of error filed by general counsel.
July 5—Proof of service filed by general counsel.
July 13—Proof of service of petition filed by general counsel (taxpayer).
July 21—Stipulation to correct assignments of error filed.
July 31—Motion for extension to Oct. 12, 1933, to complete and transmit record filed by general counsel.
July 31—Order enlarging time to Oct. 12, 1933, for preparation of evidence and delivery of record entered.
Oct 12—Motion for extension to 12/11/33 to complete record filed by general counsel.
Oct. 12—Order enlarging time to Dec. 11, 1933, for preparation of evidence and delivery of record entered.
Nov. 11—Praecipe with proof of service thereon filed by general counsel.

3 Before U. S. Board of Tax Appeals

Amended petition.

Filed Feb. 13, 1929

The above-named petitioner hereby appeals from the determination of the Commissioner of Internal Revenue, set forth in his deficiency letter (IT:CA-2552-10-60D), dated October 14, 1926, and as the basis of its appeal sets forth the following:

1. The petitioner is a corporation organized under the laws of the State of Utah, with its principal office at Sacramento, California. Since the original petition was filed all outstanding business, assets, and liabilities of the petitioner have been taken over by the California State Life Insurance Company, of Sacramento, Calif., and its records moved from Salt Lake City, Utah (the principal office prior to sale), to Sacramento, Calif.

2. The deficiency letter (copy of which is attached and marked "Exhibit A") was mailed to the petitioner on October 14, 1926, and states a deficiency of $1,903.50 for the year 1922.

3. The taxes in controversy are income taxes for the calendar year 1922 and are less than $10,000, to wit: $1,903.50; of this sum only $877.73 is contested in the original petition. As the decision of the honorable Board of Tax Appeals in the appeal of Standard Life

Insurance Company of America vs. Commissioner of Internal Revenue (Docket Nos. 12475, 25842, and 29779), promulgated July 23, 1928, is acquiesced in by the respondent, only $193.32 is in controversy.

4. The determination of taxes contained in said deficiency letter is based upon the following errors:

(a) The elimination from the reserves in schedule C of the income-tax return of the amount of coupons and dividends held on deposit, viz:

Dividends and coupons and interest on deposit December 31, 1921	$127,298.16
Dividends and coupons and interest on deposit December 31, 1922	146,477.35
Total	273,770.51
Mean	136,885.25
4% of above	5,475.41

4 (b) The elimination from the deductions of schedule A of the income-tax return of $202.61 which was charged off as depreciation on furniture and fixtures.

(c) The Commissioner failed to allow as a deduction from gross income for the year 1922 depreciation on automobiles purchased by petitioner in the year 1921 for use in its business.

(d) The Commissioner did not allow as a deduction from gross income for the year 1922 the full 4% of the mean of the reserve funds required by law in addition to the reserves for coupons and dividends held on deposit to be held at the beginning and end of the taxable year 1922 amounting to $43,170.99 for said year.

(5) The petitioner respectfully alleges the following facts in connection with these errors:

(a) Under the provisions of section 245 (a) (2) of the 1921 Revenue Act, the petitioner is legally entitled to include in the four (4) per centum of the mean of the reserve funds required by law to be held at the beginning and end of the taxable year 1922 the reserve for the payment of the unsurrendered policy coupons and interest thereon which it was required to maintain at the beginning and end of the taxable year by the insurance department of the State of Utah and the insurance laws of the various States in which it transacts business. This honorable Board has held in its decision in the appeal of Standard Life Insurance Company of America vs. Commissioner of Internal Revenue (Docket Nos. 12475, 25842, and 29779), promulgated July 23, 1928, that such amounts so held by life insurance companies to meet the payment of unsurrendered policy coupons and interest thereon is a part of the reserve funds required by law in computing the legal deduction from gross income under section 245 (a) (2) of the 1921 Revenue Act, and the respondent has, by the order of redetermination entered October 16, 1928, accepted said reserve as part of the reserves required by law.

(b) On December 31, 1922, the petitioner had $2,968.29 invested in office furniture and fixtures which had been purchased since January 1, 1921. This investment of $2,968.29 included purchases
5 of $1,884.24 during the year 1922 and the balance of $1,084.05

in the year 1921. Under the provisions of section 245 (a) (7) of the 1921 Revenue Act, the petitioner is entitled to deduct depreciation of $202.61 on its furniture and fixtures for the year 1922.

(c) On December 31, 1922, the petitioner had $3,980 invested in automobiles purchased for use in its business during the year 1921, and under the provisions of section 245 (a) (7) of the 1921 Revenue Act, the petitioner is entitled to deduct depreciation of $995 on said machines for the year 1922.

(d) Under the decision of the Supreme Court of the United States, of June 4, 1928, in the case of National Life Insurance Company v. United States, 48 Sup. Ct. 591, the petitioner is entitled to deduct from gross income the sum of $43,170.99 instead of $37,710.06, the full 4% of the mean of the reserve funds required by law to be held at the beginning and end of the taxable year 1922, without diminishing said 4% by $9,742.93, interest received from tax-exempt securities during said year under the provisions of section 245 (a) (2) of the 1921 Revenue Act (Treasury Decision No. 4231).

Wherefore, the premises considered, your petitioner respectfully prays:

(1) That its appeal from the deficiency in taxes hereinbefore stated may be allowed and said deficiency in tax set aside and nullified;

(2) That its tax liability for the year 1922 may be correctly computed and the correct deficiency or overpayment, if any, may be determined by this honorable Board, and

(3) For such other and further relief as to this honorable Board may seem just and proper.

ABRAM R. SERVEN,
Of Counsel for Petitioner,
1422 F St. NW., Washington, D. C.

[*Duly sworn to by Joshua Greenwood jurat omitted in printing.*]

6 *Exhibit A to amended petition*

Form NP-2

TREASURY DEPARTMENT,
Washington, Oct. 14, 1926.

Office of Commissioner of Internal Revenue. IT:CA-2552-10-60D.

INTER-MOUNTAIN LIFE INSURANCE COMPANY,
1120 Boston Building, Salt Lake City, Utah.

SIRS: The determination of your income tax liability for 1922, as set forth in office letter of September 2, 1926, discloses a deficiency in tax of $1,903.50, as shown in the attached statement.

In accordance with the provisions of section 274 of the Revenue Act of 1926, you are allowed 60 days from the date of mailing of

this letter within which to file a petition for the redetermination of this deficiency. Any such petition must be addressed to the United States Board of Tax Appeals, Earle Building, Washington, D. C., and must be mailed in time to reach the Board within the 60-day period, not counting Sunday as the sixtieth day.

Where a taxpayer has been given an opportunity to file a petition with the United States Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has filed a petition and an assessment in accordance with the final decision on such petition has been made,
7 the unpaid amount of the assessment must be paid upon notice and demand from the collector of internal revenue. No claim for abatement can be entertained.

If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute a waiver of your right to file a petition with the United States Board of Tax Appeals on the inclosed form A, and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT: CA-2552-10-60D. In the event that you acquiesce in a part of the determination, the waiver should be executed with respect to the items to which you agree.

Respectfully,

D. H. Blair,
Commissioner.
By C. R. Nash,
Assistant to the Commissioner.

Inclosures: Statement form A, form 882.

Statement

IT: CA-2552-10-60D.

In re: Inter-Mountain Life Insurance Company, 1120 Boston Building, Salt Lake City, Utah.

Year 1922:

Deficiency in tax	$1,903.50
Income reported in amended return	28,365.74
Add:	
1. Change of 4% of mean of reserve over exempt interest	13,681.63
2. Depreciation	1,546.41
Adjusted income	43,593.78

Explanation of adjustments

1. The coupons left with the company to accumulate with interest have been eliminated in computing the 4% of mean of reserves in

accordance with the Solicitor's ruling 9610, published in bulletin dated August 23, 1926.

Capital stock and other items included in line 7 of the return have been eliminated as they are not reserves in accordance with article 681 of Regulations 62.

8 Reserves, page 2:

	I. Beginning of year	II. End of year
Line 7	$844,822.86	$993,454.98
Line 8	11,655.01	12,633.75
Line 9	9,570.79	13,365.41
Total	866,048.66	1,019,454.14
Total, columns I and II		1,885,502.80
Mean of reserve funds (½ of item 9)		942,751.40
4% of mean of reserve funds corrected		37,710.06
Per return of taxable year		51,391.69
Difference		13,681.63

The correct computation is shown below:

Computation of tax

Gross income	$85,650.45
Deductions	42,056.67
Net income	45,593.78

Inter-Mountain Life Insurance Company

Statement

Balance	$43,593.78
Income tax assessable, 12½% of net income	5,449.22
$2,070.36 plus $1,475.36—tax assessed	3,545.72
Additional tax	1,903.50

2. As life-insurance companies are allowed depreciation on only those items used in connection with the handling of the company's investments, and as your schedules do not indicate this to be the case, the depreciation is disallowed as a deduction from income. Again, life-insurance companies are taxed only on interest, rents, and dividends and, therefore, depreciation is allowed only on those assets used in producing this income.

Net income adjusted subject to tax		$43,593.78
Tax at 12½%		5,449.22
Original tax	$2,070.36	
Tax on amended return	1,475.36	
		3,545.72
Difference		1,903.50

9 Payment should not be made until a bill is received from the collector of internal revenue for your district and remittance should then be made to him.

This office is unable to concede to your contentions set forth in protest dated September 21, 1926.

Before U. S. Board of Tax Appeals

Answer to amended petition

Filed April 16, 1929

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, general counsel, Bureau of Internal Revenue, for answer to the amended petition of this taxpayer, admits and denies as follows:

1. Admits that petitioner is a corporation organized under the laws of the State of Utah. For lack of information sufficient to form a belief as to the truth or falsity thereof, denies the remaining allegations of paragraph 1.

2. Admits the allegations of paragraph 2.

3. Admits that the taxes in controversy are income taxes for the calendar year 1922 and are less than $10,000.00. Denies the remaining allegations of paragraph 3.

4. (a–d). Denies each and every assignment of error pleaded in paragraph 4, subparagraphs (a) to (d), inclusive.

5. (a–d). Denies each and every allegation of fact properly pleaded in paragraph 5, subparagraphs (a) to (d), inclusive.

Denies individually and collectively each and every allegation of fact properly pleaded in the taxpayer's amended petition not hereinbefore specifically admitted, qualified, or denied.

Wherefore, it is prayed that the taxpayer's appeal be denied.

(Signed) C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Of counsel: A. H. Willey, special attorney, Bureau of Internal Revenue. 4–16–29.

10 *Amendment to answer to amended petition*

Filed at hearing, Nov. 16, 1932

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, general counsel, Bureau of Internal Revenue, amends his answer to the amended petition of this taxpayer by adding to paragraph 5 ((a) to (d)) the following:

Avers that in determining the net income upon which the deficiency shown in notice of deficiency dated October 14, 1926 is based, he allowed as a deduction for the calendar year 1922 the amount of $897.58, interest paid to holders of coupon policies on amounts theretofore left by such policyholders to accumulate at interest upon surrender during the year 1922 of matured coupons; that in the event it is held that the liability of petitioner for amounts left with it to accumulate at interest represented by unpaid matured coupons attached to coupon policies and the compound interest thereon is a reserve fund required by law, then such interest in the amount of $897.58 was improperly allowed as a deduction from gross income for the calendar year 1922.

And amends the prayer to read as follows:

Wherefore, it is prayed that the taxpayer's appeal be denied and that the deficiency shown in notice of deficiency dated October 14, 1926, be increased on account of the disallowance of the deduction of interest in the amount of $897.58 paid to policyholders on amounts represented by coupons surrendered during the calendar year 1922 and claim is hereby made for such increased amount of deficiency.

C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

Of counsel: DeWitt M. Evans, special attorney, Bureau of Internal Revenue.

11d 11/15/32.

Before U. S. Board of Tax Appeals

Stipulation of facts

Filed at hearing, Nov. 16, 1932

It is hereby stipulated and agreed, by and between Inter-
11 Mountain Life Insurance Company, petitioner herein, and the Commissioner of Internal Revenue, respondent herein, that the following are facts which may be considered by the Board in this appeal:

1. Petitioner is a capital-stock life insurance company organized under the laws of the State of Utah in the year 1911. During the calendar year 1922 its principal office was located at Salt Lake City, Utah. It filed its Federal income-tax return for the calendar year 1922 in the office of the Collector of Internal Revenue for the District of Utah in Salt Lake City, Utah. Its books of account and its Federal income-tax return for the calendar year 1922 were upon a cash receipts and disbursements basis.

2. During the calendar year 1922 and for a long time prior thereto petitioner was engaged in the business of issuing life insurance contracts in Utah, Idaho, and Arizona. Among the insurance contracts so issued were those denominated 20-payment life coupon policy—nonparticipating. A specimen of this type of policy is hereto attached marked "Exhibit A" and is made a part of this stipulation.

3. Each of the policies of which exhibit A of this stipulates is a specimen, is issued with nineteen coupons attached thereto. Such coupons mature serially on anniversary dates of the policy beginning with the first anniversary and ending with the nineteenth, provided the premiums for the policy year beginning on the date of the coupon are paid and all premiums previously due have been paid. Each coupon is a promise that at its maturity petitioner will pay to the owner of the policy the amount thereof. By the terms of the policy the insured is given certain elections and options respecting such coupons among which it is provided that the petitioner will credit to the insured the face amount of any matured coupon, as

said coupon, becomes due, and will pay compound interest thereon at the rate of three and one-half per centum per annum, thereby creating a fund to the credit of the insured, which amount may be applied to the payment of premiums or withdrawn in cash at any time by the insured and if not so applied or withdrawn by the insured prior to his death, the values represented by the coupons, with interest to date of death, will, in the event of the death of the insured while the policy is in force, be paid to the beneficiary, in addition to the face amount of the policy, upon surrender
12 to the petitioner of the policy and all coupons issued therewith and unpaid or unmatured prior to the date of said death.

4. On January 1, 1922, petitioner's liability for amounts which had been left with it to accumulate at interest represented by unpaid matured coupons attached to policies then in force of the type of which exhibit A of this stipulation is a specimen, and the compound interest thereon from the maturity date of each coupon, was $126,949.03. On December 31, 1922, the amount of such liability was $146,097.75. The mean amount of these sums is $136,523.39, and this amount of $136,523.39 has not been included in the amount of reserve funds required by law, 4% of which was allowed as a deduction in notice of deficiency dated October 14, 1926, from which this appeal is taken.

5. Pursuant to the terms of the policies of which exhibit A of this stipulation is a specimen, the insured, at any time during the first policy year or within one month after the due date of the second annual premium, may, in writing, elect to convert the coupons originally attached to such policies, as such coupons mature, into paid-up life additions to the policy for amounts shown on the reverse side of each coupon and each coupon must be surrendered to the company within one month of its due date, and payment of the annual premium due on same date made in full in cash. The reverse side of the coupons reads:

"Paid-up addition for this coupon

----------dollars

Payable at death in addition to the principal sum insured, but reconvertible at any time into its cash value."

When the coupon is so surrendered for paid-up additions to the policy and full premiums paid, petitioner issues to insured a letter of acknowledgment of his remittance and coupon in which it is stated that the amount of the paid-up life insurance has been effected. The paid-up addition to the policy is then only reconvertible into its cash surrender value.

6. In computing the net income shown in notice of deficiency dated October 14, 1926, from which this appeal is taken, the
13 deduction for 4% of the mean of reserve funds required by law was allowed therein an amount reduced by $9,742.93, representing interest received during the calendar year 1922 on tax-exempt securities which was included in gross income; that the net

income as shown in such notice of deficiency should be reduced by the amount of $9,742.93.

7. Petitioner abandons its contention that it be allowed depreciation on furniture and fixtures owned on December 31, 1922, in the amount of $202.61, which is set forth in assignment of error 4 (b) and allegation of fact paragraph 5 (b) of the amended petition filed herein.

8. During the calendar year 1922, petitioner paid to holders of policies, of the type of which exhibit A is a specimen, interest on amounts theretofore left to accumulate at interest represented by matured coupons surrendered during that year together with the amounts represented by such coupons as were surrendered during that year; the amount of such interest was $897.58 and that amount of interest has been allowed as a deduction in determining the net income upon which the deficiency shown in notice of deficiency dated October 14, 1926, is based. It is agreed that in the event the Board holds that the liability of petitioner for amounts left with it to accumulate at interest represented by unpaid matured coupons attached to policies of the type of which exhibit A is a specimen and the compound interest thereon is a reserve fund required by law, then such amount of interest of $897.58, paid to policyholders on amounts represented by coupons surrendered shall not be deducted from gross income for the calendar year 1922, and the net income for that year as shown in notice of deficiency dated October 14, 1926, shall be increased accordingly.

9. The reserves to the nearest dollar as at the end of the policy years indicated for each $1,000.00 of insurance on 20-payment life coupon policy—nonparticipating, of which exhibit A is a specimen, under the hypotheses stated below, are as follows:

[34]

End of policy year	Reserve—exclusive of the cash value of any matured outstanding coupons	Reserve—if the paid-up addition option is in force as provided on page 3 of the policies of which exhibit A is a specimen	End of policy year	Reserve—exclusive of the cash value of any matured outstanding coupons	Reserve—if the paid-up addition option is in force as provided on page 3 of the policies of which exhibit A is a specimen
1	None	None	11	$249.00	$357.00
2	$21.00	$29.00	12	279.00	400.00
3	43.00	60.00	13	311.00	448.00
4	65.00	91.00	14	343.00	496.00
5	89.00	126.00	15	377.00	545.00
6	113.00	159.00	16	412.00	600.00
7	138.00	195.00	17	449.00	653.00
8	165.00	234.00	18	486.00	711.00
9	192.00	271.00	19	525.00	770.00
10	220.00	312.00	20	566.00	833.00

(Signed) GUY PATTEN,
Counsel for Petitioner.

C. M. CHAREST,
General Counsel, Bureau of Internal Revenue.

11d 11/15/32.

RGW

Exhibit A to stipulation of facts, page 1

Incorporated as a stock company by the State of Utah

Amount $10,000.00. Number Sample.

Inter-Mountain Life Insurance Company

Salt Lake City, Utah

Age 35. Premium $420.90.

Will pay ten thousand dollars ($10,000.00) (the face of this policy) to Mary Doe, wife of the insured, beneficiary, or to such other beneficiary as may be designated by the insured as hereinafter provided, at the home office of the company, immediately after receipt of due proof of the death of: John Doe, the insured, while this policy is in force.

Guaranteed options at the end of twenty years

If all the premiums due hereon as stated in the consideration paragraph herein are paid to the company in full in cash, and if as each coupon attached hereto matures, the amount thereof has been left with the company to accumulate at interest, then upon the surrender of this policy and all coupons which are attached hereto at date of issue, the insured shall select one of the following options at the end of twenty years from the date hereof:

1. A guaranteed cash payment of eight thousand dollars.
2. A paid-up policy for life of fourteen thousand one hundred thirty dollars, subject to satisfactory evidence of insurability for the excess over the orginal face amount of this policy.
3. A guaranteed annual income of four hundred ninety dollars, to continue for at least twenty years and as many years thereafter as the insured shall survive.
4. A paid-up policy for life of ten thousand dollars, without medical reexamination, and an annual income of $174.40 dollars, payable annually thereafter during the life of the insured.

Consideration: The consideration for this policy is the application herefor, which is hereby made a part of this contract, a copy of which application is attached hereto or endorsed hereon, and of the cash payment in advance of an annual premium of four hundred twenty and 90/100 dollars ($420.90) for term insurance for one year ending on the first day of December 1920, and the payment of an equal sum on or before the first day of December in every year hereafter, until full premiums have been paid for twenty years from the date hereof or until the prior death of the insured.

The benefits, privileges, conditions, and tables stated on the following pages hereof are a part of this policy as fully as if recited and shown in full over the signatures hereto affixed.

16 In witness whereof, the Inter-Mountain Life Insurance Company has caused this policy to be executed at Salt Lake City, Utah, this first day of December 1919.

Attest:

Sample.
Secretary.

President.

The reserve under this policy shall be invested in first mortgages on real estate, in United States, State, county, or municipal bonds, or other securities in conformity with the insurance code of the State of Utah.

(Seal.)

20-Payment Life Coupon Policy----------Non-Participating.

Form 2. Ed. 10-29-19. 2000

Exhibit A, page 2

Benefits, privileges, conditions, and tables referred to on page one hereof

Additional death benefit: If any or all of the values represented by the coupons attached hereto at date of issue are left on deposit with the company at three and one-half per centum compound interest per annum, such values of said coupons, with interest to date of death, will, in the event of the death of the insured while this policy is in force, be paid to the beneficiary, in addition to the face amount hereof, upon surrender to the company of this policy and all coupons issued therewith and unpaid or unmatured prior to the date of said death.

Fully paid-up benefit: If all of the values represented by the first fourteen coupons attached to this policy at issue, are left on deposit with the company at compound interest as aforesaid, the company will, upon written request of the insured hereunder, issue in lieu of this policy a fully paid-up policy for ten thousand dollars ($10,000) at the end of fifteen years from the date of this policy, upon the surrender to the company of this policy and all of the coupons originally attached hereto.

Savings fund: If any premium after the first, as provided in the consideration paragraph herein, is paid to the company in full in cash, the company will credit to the insured hereunder the
17 face amount of any coupon then matured, as said coupon becomes due, and will pay compound interest thereon at the rate of three and one-half per centum per annum, thereby creating a fund to the credit of this policy, which fund may be applied to the payment of premiums or withdrawn in cash at any time by the insured.

Cash loans: After three full years' premiums have been paid hereon, the company, at any time while this policy is in force, will

loan, upon the proper assignment of this policy and upon the sole security thereof, at a rate of interest which will not exceed six per centum per annum, a sum equal to, or at the option of the owner hereof, less than the loan value hereon at the end of the then current policy year. The company will deduct from such loan value any existing indebtedness hereon, and any unpaid balance of the premium for the current policy year, and will collect interest in advance on the loan to the end of the current policy year and annually in advance thereafter. Failure to repay any such loan or to pay interest thereon shall not void the policy until the total indebtedness hereon to the company shall equal or exceed the loan value at date of default, nor until one month after notice shall have been mailed by the company to the last known address of the insured and of the assignee, if any.

Loans without request of insured: If any premium hereon shall not be paid when due, and if no other surrender option has been chosen by the insured within the month of grace, the company will, without request on the part of the insured, charge the amount then due hereunder as a loan against the policy, with interest in advance at a rate not exceeding six per centum per annum, if the loan value hereon at date such premium was due is sufficient to secure all indebtedness hereunder, with interest. If the premium is so charged, this policy will be continued in force the same in all respects as though said loan had been requested by the insured. The same benefit will be applied from time to time as the premiums become due hereunder and are not paid, as long as the balance of the loan value hereon at the last date of nonpayment of premium is sufficient to pay for one day's insurance on a pro rata basis.

If the entire loan value of the policy is applied as hereinabove provided, the value of any and all matured, outstanding coupons,
to the credit of this policy in cash, will be further applied
18 to continue this policy in force in the same manner and upon
the same conditions as the loan value, upon surrender of such coupons to the company.

Notice of such loans will be mailed to the insured when made, and to the assignee, if any is recorded on this policy, and said insured may resume the payment of premiums hereon at any time, without medical reexamination, while the policy is so continued in force. The indebtedness hereon may be repaid wholly or in part in cash, or may be allowed to remain as a loan against the policy.

In any settlement of the policy the indebtedness to the company hereon shall be a first lien in priority to the claim of any beneficiary or assignee.

Decreasing premiums: At the option of the insured, the values represented by any or all of the coupons originally attached hereto, may be applied by the insured to reduce the premiums due and payable hereunder, as the premiums and coupons become due.

If the insured shall elect to apply this option, the amount due the company in any policy year will be the premium shown in the consideration paragraph herein, less the amount of the coupon due on the same date as the premium from which it is deducted. The balance shall be due the company in cash and the coupon then due shall be returned therewith for cancellation.

If the premiums hereunder are paid semiannually or quarterly the pro rata value of any coupon shall be applied as said premiums are paid.

Guaranteed surrender options: After three full years' premiums have been paid hereon, if any subsequent premium is not paid when due, the insured, upon surrender of this policy and all coupons not yet due to the company, and upon written request, both within the month of grace, shall be entitled to one of the following options:

1st. Cash: A cash payment equal to the loan value hereon at the date of default.

2nd. Paid-up insurance: A paid-up insurance policy payable at the same time and under the same conditions as this policy.

19 3rd. Extended insurance: A term insurance policy for the full amount of this policy.

The amounts of the loan or cash values and paid-up insurance and the term of the extended insurance are shown in columns 1, 2, and 3, respectively, of the table of guaranteed loan and surrender value shown herein, and are, without exception, equal or equivalent to the entire reserve hereon at the date of default, according to the American Experience Table of Mortality, with interest at the rate of three and one-half per centum per annum, less a surrender charge in no case exceeding two and one-half percent of the face of the policy.

Additional values not shown in the table will be allowed for parts of a policy year's premiums paid, and the values for later years not shown in the table, if a paid-up policy is then selected, will be equal or equivalent to the entire reserve on the policy.

The cash value of any and all matured, outstanding coupons, to the credit of this policy in cash at the date of default, will be paid to the insured, upon selection by said insured of one of the above three options and the surrender of said coupons to the company.

Table of guaranteed loans and surrender values

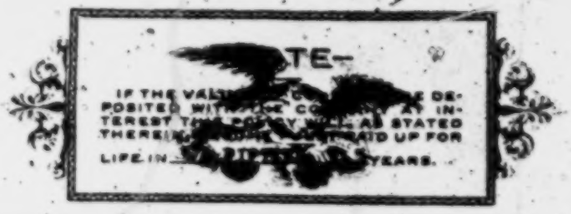
Exclusive of the cash value of any matured outstanding coupons

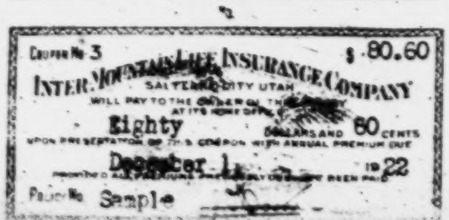
The following table is for a policy whose face value is $1,000. If the face value of this policy is more or less than $1,000, the values in column 1 and column 2 will apply pro rata. The amounts in column 3 will be unchanged by the amount of insurance.

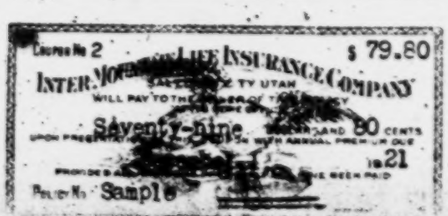
Cash Value of Coupons

Paid-Up Additions:—At any time during the first policy year or within one month after the due date of the second annual premium, the Insured, upon written request to the Company, may elect to convert the coupons originally attached hereto, as said coupons mature, into Paid-up Life Additions to this Policy for the amounts shown on the reverse side of the coupons. Said Paid-up additions shall not, however, be doubled in value in the event of the accidental death of the Insured.

If this option is selected each coupon must be surrendered to the Company within one month of its due date, together with payment of the annual premium due on same date in full in cash.







(4)

Tab. 7 of Guaranteed Increased Loan and Non-Forfeiture Values

Available only if there be no indebtedness upon the policy and premiums are paid in full in cash and if the paid-up addition option is in force, as provided on page three hereof. (The amounts shown in this table are for a $1000 policy. If this policy is for more or less than $1000, such amounts will apply pro rata.)

YEARS PREMIUM PAID	CASH OR LOAN VALUE	PAID-UP LIFE INSURANCE	AMOUNT PAYABLE AT DEATH
1	$		$1,000
2		$ 22	1,022
3	80	153	1,044
4	91	228	1,068
5	130	305	1,086
6	156	380	1,110
7	156	455	1,133
8	334	534	1,156
9	371	609	1,179
10	512	685	1,203
11	307	761	1,227
12	400	838	1,253
13	448	916	1,277
14	496	992	1,303
15	545	1,071	1,329
16	600	1,147	1,355
17	653	1,228	1,382
18	711	1,304	1,409
19	770	1,385	1,437
20	833	1,465	1,465

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Eighty Dollars
PAYABLE AT DEATH 19 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

NOTE—
THE CASH VALUE OF PAID-UP
ADDITIONS SHOWN HEREON WILL BE
THE KNOWN RESERVE ON SAID
ADDITIONS

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Seventy Dollars
PAYABLE AT DEATH 16 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Seventy Dollars
PAYABLE AT DEATH 17 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Eighty Dollars
PAYABLE AT DEATH 18 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Sixty Dollars
PAYABLE AT DEATH 13 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Sixty Dollars
PAYABLE AT DEATH 14 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Sixty Dollars
PAYABLE AT DEATH 15 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Forty Dollars
PAYABLE AT DEATH 10 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Fifty Dollars
PAYABLE AT DEATH 11 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Fifty Dollars
PAYABLE AT DEATH 12 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Thirty Dollars
PAYABLE AT DEATH 7 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Thirty Dollars
PAYABLE AT DEATH 8 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Forty Dollars
PAYABLE AT DEATH 9 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Twenty Dollars
PAYABLE AT DEATH 4 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Twenty Dollars
PAYABLE AT DEATH 5 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Thirty Dollars
PAYABLE AT DEATH 6 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Twenty Dollars
PAYABLE AT DEATH 1 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Twenty Dollars
PAYABLE AT DEATH 2 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

PAID-UP ADDITION FOR THIS COUPON
Two Hundred Twenty Dollars
PAYABLE AT DEATH 3 IN ADDITION TO
THE PRINCIPAL SUM INSURED, BUT
RECONVERTIBLE AT ANY TIME
INTO ITS CASH VALUE

Years' premiums paid	Column 1, cash or loan value	Column 2, paid-up insurance	Column 3, extended insurance for face amount	
			Years	Days
3	$43	$109	4	348
4	65	162	7	179
5	89	217	10	49
6	113	270	12	180
7	138	322	14	221
8	165	378	16	201
9	192	430	18	55
10	220	482	19	196
11	249	534	20	274
12	279	586	21	209
13	311	639	22	312
14	343	689	23	277
15	377	742	24	265
16	412	792	25	271
17	449	846	26	352
18	486	895	28	142
19	525	948	30	197
20	566	1,000	Life	

23 Exhibit A, page 5

Incontestability: This policy and the application therefor constitute the entire contract between the insured and the company and shall be incontestable for any cause after two years from the date of issue, except for nonpayment of premiums or for violation of the provision relating to military or naval service.

If during the first policy year the insured shall suicide, whether sane or insane, the company shall be liable only for the cash premiums actually paid hereon.

All statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties, and no such statement shall be used to void the policy or in defense of a claim hereunder unless said statement is contained in the written application herefor.

If the age of the insured has been misstated, the amount payable under this policy shall be the amount which the premium actually paid would have purchased at the correct age.

Military or naval service: During the first ten years of this policy, military or naval service in time of war is a risk not assumed by the company unless the insured shall give notice thereof to the company within thirty-one days after entering on such service, and pay such extra premiums as the company may fix therefor. In event of the insured entering upon such service and failing to give such notice, or failing to pay such extra premiums at the times and in the manner required, the liability of the company for death of the insured during such period of ten years, while engaged in or as a result of such service, shall be limited to the return of the premiums paid on this policy, less any indebtedness hereon to the company.

Payment of premiums: All premiums hereon after the first are payable in advance, either at the home office of the company or to an agent, on the delivery of a receipt signed by the president or secretary of the company. Any part of the then current policy year's premium unpaid at the death of the insured shall be deducted from the amount payable hereunder.

No officer other than those above stated, and no agent, has the power to make or to modify this or any other contract of the
24 company in any respect whatever, and the company is not responsible for, and shall not be bound by, any promises or representations made by any person other than the officers named, and then not unless said promises or representations are in writing and signed by one of the officers stated.

If any premium or note or installment thereof or other obligation given for all or a part of any premium or other indebtedness, is not paid on or before the date when due, the liability of the company hereunder shall cease, except as otherwise provided herein.

The premium is considered as payable annually in advance; but premiums after the first may be paid in semiannual or quarterly installments at the company's rates therefor, printed on the back of this policy. Any unpaid premium required to complete the payments for the current policy year in which death occurs shall be deducted from the amount payable hereunder.

Grace in payment of premiums: A period of grace of one month (not less than thirty days) will be allowed for the payment of every premium hereunder after the first without any interest charge therefor, during which month the full insurance hereunder shall continue in force.

Reinstatement: If, in the event of default in any premium payment hereon, the value of this policy shall be applied to the purchase of paid-up insurance or extended insurance, and if such paid-up insurance or extended insurance shall be in force, this policy may be reinstated at any time, upon evidence of insurability satisfactory to the company and the payment of arrears of premiums, with compound interest thereon at a rate not exceeding six per centum per annum. The indebtedness hereon, if not greater than the loan value at the date of reinstatement, may be allowed to remain as a loan against the policy, subject to interest.

Method of change of beneficiary: At any time while this policy is in force, the insured, if there be no existing assignment of the policy filed at the home office of the company as herein provided, may designate a new beneficiary or beneficiaries, without obtaining the consent of any beneficiary hereunder, by filing such request at the
home office upon the form of the company for this purpose,
25 accompanied by the policy for endorsement thereon. Such change shall become effective only when said endorsement is made on the policy by the company, whereupon the rights of any former beneficiary or beneficiaries shall cease. If no beneficiary

hereunder is living at the death of the insured, the proceeds of the policy will be paid to the executors, administrators, or assigns of the insured.

Assignment: This policy may be assigned by the insured, but no such assignment shall be binding upon the company until a duplicate copy thereof, upon the company's form, has been filed at the home office, and the company shall not be responsible for the legality of any assignment, and any claim hereunder by an assignee shall be subject to proof of assignment and extent thereof.

Indebtedness: Any indebtedness to the company hereon will be deducted in any settlement hereunder upon the death of the insured or in the payment of any other benefit. If this policy shall lapse and there shall be an indebtedness hereon, the said indebtedness will be deducted from the cash value of the policy at date of default, shown in column 1, and the balance will be (A) paid to the insured in cash, or (B) applied to the purchase of a paid-up insurance policy, payable at death, or (C) applied to purchase a term insurance policy for the face amount hereunder, at the request of said insured and the surrender of this policy during the month of grace, and said values shall be calculated upon the same basis as the values herein shown in the table of guaranteed loans and surrender values.

Rights of the insured: It is understood and agreed that the insured may obtain every benefit, exercise every right, and enjoy every privilege conferred upon said insured by this policy, without the consent of any beneficiary.

Methods of payment of death benefit: The amount insured by this policy, unless otherwise requested by the insured, will be paid in one sum as provided on page one hereof.

The insured, however, during his lifetime, or the beneficiary after the death of the insured, in case the insured has made no selection, may, if this policy is not then assigned, and upon request to the company on the proper form, change the method of payment hereof, by selecting any one of the following benefits:

26 Benefit one—Trust fund: The amount insured, or any portion thereof not less than one thousand ($1,000) dollars, may be left during the lifetime of the beneficiary in trust with the company, and the company will annually pay interest thereon at the rate of three and one-half per centum per annum, so long as the said amount insured or said portion thereof remains with the company. The said trust fund will be paid at the death of the beneficiary to the executors, administrators or assigns of the beneficiary, and may be withdrawn at any time with accrued interest, unless the company is otherwise directed in the request selecting this benefit.

The trust fund privilege may not be selected if the beneficiary under this policy be a corporation or a firm.

Benefit two—Annual income for number of years stated: The following table is for each $1,000 of the amount insured. To find the annual income on this policy, multiply the annual income per $1,000,

shown in the table, by the number of thousands insured by this policy.

Number of years	30	25	[1]20	15	10	5	4	3	2
Annual income per $1,000	$52	58	68	84	116	214	264	345	508

The first income will be paid immediately after receipt of due proofs of the death of the insured, and the remaining payments annually thereafter.

Benefit three—Monthly income during lifetime of beneficiary: The following table is for each $5,000 of the amount insured. To find the monthly income on this policy multiply the monthly income for each $5,000, shown in the table, by the number of times five thousand is insured by this policy.

Two hundred and forty monthly payments, at least, will be paid, in any event, covering a period of twenty years, and the monthly income will continue during the entire lifetime of the beneficiary, should the beneficiary survive said period of twenty years.

27 Age of beneficiary at death of insured	Monthly income for each $5,000	Age of beneficiary at death of insured	Monthly income for each $5,000
10 or under	$16.75	40	$21.35
11	16.80	41	21.60
12	16.90	42	21.85
13	17.00	43	22.10
14	17.10	44	22.40
15	17.20	45	22.70
16	17.25	46	23.00
17	17.35	47	23.30
18	17.45	48	23.60
19	17.60	49	23.90
20	17.75	50	24.20
21	17.85	51	24.45
22	17.95	52	24.70
23	18.10	53	24.95
24	18.25	54	25.20
25	18.40	55	25.45
26	18.55	56	25.75
27	18.70	57	26.00
28	18.85	58	26.25
29	19.05	59	26.50
30[1]	19.20	60	26.75
31	19.35	61	26.95
32	19.50	62	27.15
33	19.70	63	27.30
34	19.90	64	27.40
35	20.15	65	27.50
36	20.35	66	27.55
37	20.55	67	27.60
38	20.80	68	27.65
39	21.05	69 and over	27.70

[1] Illustration: If at the death of the insured, the beneficiary shall be thirty years of age last birthday, the amount of each monthly payment under this policy will be nineteen dollars and twenty cents ($19.20) for every five thousand dollars insured by this policy, said monthly income continuing for at least twenty years and as much longer as the beneficiary shall survive.

28 The first monthly income will be paid immediately after receipt of due proofs of the death of the insured, and succeeding incomes on the first day of each month thereafter.

This benefit may not be selected if there is more than one beneficiary under this policy, nor if the amount insured hereby is less than two thousand five hundred ($2,500) dollars.

[1] Illustration: If an annual income for twenty years is selected, the amount of each annual payment will be sixty-eight ($68.00) dollars for each thousand dollars insured by this policy. Any term of years shown in the above table may be selected.

INTER-MOUNTAIN LIFE
INSURANCE COMPANY

SALT LAKE CITY, UTAH.

John Doe

No Sample

Age 35

Amount	$ 10,000.00
Annual Premium	$ 420.90
Semi Annual	$ 218.90
Quarterly	$ 111.50

Premium Payable Annually

on the First day of December

NOTICE - No receipt issued for the initial collecting the insurance or any benefit under this policy unless application shall be made direct to the Home Office.

20-Payment Life Coupon—Non Participating.

REGISTER OF CHANGE OF BENEFICIARY

NOTE—No notice of Change of Beneficiary or the assignment of this Policy by the Company at the Home Office shall take effect until endorsed on this Policy by the Company at the Home Office.

DATE ENDORSED	BENEFICIARY	ENDORSED BY

Subject to the conditions printed herein, this draft will be paid at the company's home office in Salt Lake City, Utah.

PRESIDENT

ISSUED BY

INTER-MOUNTAIN LIFE INSURANCE COMPANY

SALT LAKE CITY, UTAH.

ONE HUNDRED

SUBJECT TO THE FOLLOWING CONDITIONS WHICH ARE HEREBY MUTUALLY AGREED TO

No. 100 Dollars $100.00

TO INTER-MOUNTAIN LIFE INSURANCE CO.

SALT LAKE CITY, UTAH.

Dated at _____ State of _____

This _____ Day of _____ 19__

To the Beneficiary. In case of death of the insured, take this policy together with all receipts and proofs and fill in the name of the bank on the face and in accordance with the terms of the draft, sign and get $100.00 at said bank without delay. Cut out this draft, sign it and

W. Smith. Pay to the order of _____ Name of Bank

Which sum shall be paid by it in conformance thereto and charge the Insured under Policy No. _____

Beneficiary Sign Here

ab

General: The insured may, at any time change his selection of the "Methods of payment of death benefit" under this policy; he may also revoke all selections, thereby making this policy again payable in one sum.

If, upon the selection of benefit two or benefit three above, the beneficiary shall die before all the payments due thereunder have been made, the remainder of said payments will continue to be paid as selected by the insured under this policy, or, if the insured has made no such selection, will be commuted at three and one-half per centum compound interest and paid in one sum to the executors, administrators, or assigns of the beneficiary.

If the insured so directs during his lifetime, the beneficiary may neither assign nor commute any payments hereunder before same are due. No selection, change, or revocation of any one of the above benefits shall take effect until endorsed on this policy by the company at its home office. After endorsement this policy will be returned to the insured.

30 Before U. S. Board of Tax Appeals

Excerpt from transcript of hearing of Nov. 16, 1932, showing opinion of Board

The member: In view of the fact that the only remaining issue in the case for disposition is the one issue which has already been decided, as you both agree, by the Board in the Standard case and the Reserve case and the Western Union case, and by the Circuit Court of Appeals for the Ninth Circuit in the Western Union case affirming the Board, and of the Third Circuit in the Standard case affirming the Board and the appeal in the Reserve case has been dismissed at the behest of the Government, upon the facts as now stipulated, I will decide this case in favor of the petitioner and direct counsel, in accordance with their stipulation, to submit a judgment under rule 50.

I do this because your stipulation of facts makes it unnecessary to make any finding of facts and the existing authorities makes the question itself clear enough.

Before U. S. Board of Tax Appeals

Judgment

Subsequent to the Board's decision rendered at the close of the hearing on November 16, 1932, which appears in the transcript of record, the respondent filed a proposed judgment which the petitioner agrees is in conformity with said decision. In accordance therewith, it is

Ordered, adjudged, and decided that there is a deficiency in income tax for 1922 of $115.22.

(Signed) JOHN M. STERNHAGEN,
Member.

Entered April 8, 1933.

Before U. S. Board of Tax Appeals

Petition for review and assignments of error

Filed July 3, 1933

To the Honorable Judges of the United States Circuit Court of Appeals for the Tenth Circuit:

Now comes Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Sewall Key, head, Tax Section, Department of Justice, E. Barrett Prettyman, general counsel, Bureau of In-
31 ternal Revenue, and James C. Maddox, special attorney, Bureau of Internal Revenue and respectfully shows:

I

The petitioner on review (hereinafter referred to as the petitioner), is the duly appointed and qualified Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States. The respondent on review (hereinafter referred to as respondent), is a corporation organized and existing under the laws of the State of Utah, with its principal office and principal place of business in Salt Lake City, State of Utah. The Federal income-tax return of respondent for the calendar year 1922 was filed with the collector of internal revenue for the collection district of Utah, located in Salt Lake City, State of Utah, which said collection district is located within the Tenth Judicial Circuit of the United States.

II

The nature of the controversy is as follows:

The respondent is a capital stock life insurance company which, during the calendar year 1922 and for a long time prior thereto, was engaged in the business of issuing life insurance contracts in Utah, Idaho, and Arizona. Its books of account and its Federal income-tax return for the calendar year 1922 were upon a cash receipts and disbursements basis. Among the insurance contracts that it issued were those denominated "20-payment life coupon policy—nonparticipating." Each of such "20-payment life coupon policies—nonparticipating", was issued with 19 coupons attached thereto, the coupons maturing serially on anniversary dates of the policy, beginning with the first anniversary and ending with the 19th, providing the premiums for the policy year beginning on the date of the coupon and all premiums previously due had been paid. Each coupon upon its maturity is a promise that the amount thereof will be paid to the owner of the policy. By the terms of the policy, the insured is given certain elections and options respecting such unpaid matured coupons among which is the option that if any premium after the first is paid to the company in full in cash and the amount of the cou-

pon is deposited with the company at interest, the company
32 will credit to the insured the face amount of any matured coupon as such coupon becomes due and agrees to pay compound interest thereon at the rate of 3½ per centum per annum from the maturity date of the coupon until it is paid. The amount thus credited to the insured on account of unpaid matured coupons plus compound interest thereon may be applied to the payment of premiums or withdrawn in cash at any time by the insured. If the amounts represented by the first 14 coupons attached to the policy when issued are left on deposit with the company at compound interest as aforesaid, the company will, at the end of 15 years from the date of such 20 payment life coupon policy, upon written request of the insured, issue in lieu of such 20-payment life coupon policy a fully paid-up policy for the full face amount of the insurance named in such 20-payment life coupon policy upon surrender to the company of that policy and all of the coupons originally attached thereto. If the amount represented by the coupons is not applied to the payment of premiums or withdrawn in cash by the insured and is not used to secure a fully paid-up policy as hereinabove stated, then, upon the death of the insured while such 20-payment life coupon policy is in full force, the amount of any unpaid matured coupons with interest to date of death will be paid to the beneficiary in addition to the face amount of such 20-payment life coupon policy upon surrender to the company of that policy and all coupons issued therewith and unpaid or unmatured prior to the date of the death of the insured.

The liability of respondent for amounts which had been left on deposit with the company to accumulate at interest represented by unpaid matured coupons attached to "20-payment life coupon policies—nonparticipating", then in force and the compound interest thereon from the maturity date of each coupon was, on January 1, 1922, $126,949.03. On December 31, 1922, the amount of such liability was $146,097.75. In its Federal income tax return for the calendar year 1922, respondent claimed a deduction of 4% of the mean of its liability for amounts left on deposit with it to accumulate at interest represented by unpaid matured coupons attached to "20-payment life coupon policies—nonparticipating", and such deduction was disallowed by petitioner. As a result of this disallowance together with other adjustments not now in controversy, petitioner determined a deficiency in Federal income taxes for the
33 calendar year 1922 in the amount of $1,903.50 and on October 14, 1926, sent to respondent by registered mail a notice of said deficiency. Thereafter respondent duly appealed from said notice of deficiency to the United States Board of Tax Appeals. Said appeal was heard by said Board on November 16, 1932, and at the conclusion of such hearing said Board orally decided the issue here involved, sustaining the contention of respondent on review. On April 8, 1933, said Board entered its decision wherein it ordered and decided that there was a deficiency due from respondent for the calendar year 1922 in the amount of $115.22. Said Board held that the

liability of respondent for amounts left on deposit with it to accumulate at interest represented by unpaid matured coupons attached to "20-payment life coupon policies—nonparticipating", and the compound interest thereon, was a reserve fund required by law and permitted the deduction of 4% of the mean of such liability from gross income.

III

The petitioner says that in the record and proceedings before the United States Board of Tax Appeals and in the findings of fact, opinion, and decision promulgated and entered by said Board of Tax Appeals manifest error occurred and intervened to the prejudice of the petitioner and the petitioner assigns the following errors:

1. The Board erred in holding that the respondent's liability upon matured premium-reduction coupons was a reserve fund required by law within the meaning of section 245(a)(2) of the Revenue Act of 1926.

2. The Board erred in permitting the respondent to deduct from its gross income of the calendar years 1925 and 1926 four per cent of the mean at the beginning and end of each taxable year of its liability upon matured premium-reduction coupons. Wherefore, the Commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Tenth Circuit, that a transcript of the record be prepared in accordance with law and with the rules of said court and transmitted to the clerk of said court for filing, and that appro-
34 priate action be taken to the end that the errors complained of may be reviewed and corrected by said court.

(Sgd.) SEWALL KEY,
Head, Tax Section, Department of Justice.
(Signed) E. BARRETT PRETTYMAN,
General Counsel, Bureau of Internal Revenue.

Of Counsel: (Sgd.) James C. Maddox, special attorney, Bureau of Internal Revenue.

11d 7/1/33.

[*Duly sworn to by James C. Maddox, jurat omitted in printing.*]

Before U. S. Board of Tax Appeals

Notice of filing petition for review

Filed July 5, 1933

To: Abraham R. Serven, Esq., Kellogg Building, 1422 F Street N. W., Washington, D. C.

You are hereby notified that the Commissioner of Internal Revenue did, on the 3rd day of July 1933, file with the clerk of the United States Board of Tax Appeals, at Washington, D. C., a

petition for review by the United States Circuit Court of Appeals for the Tenth Circuit, of the decision of the Board heretofore
35 rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this day of July 1933.

(Signed) E. BARRETT PRETTYMAN,
General Counsel, Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of errors mentioned therein, is hereby acknowledged this 3rd day of July 1933. (Sgd.) Robert Serven, attorney for respondent on review.

Before U. S. Board of Tax Appeals

Notice of filing petition for review

Filed July 13, 1933

To: Inter-Mountain Life Insurance Company, Twelfth Floor, Continental Bank Building, Salt Lake City, Utah.

You are hereby notified that the Commissioner of Internal Revenue did, on the 3rd day of July 1933, file with the clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Tenth Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 3rd day of July 1933.

(S.) E. BARRETT PRETTYMAN,
General Counsel, Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of errors mentioned therein, is hereby acknowledged this 5 day of July 1933. (Sgd.) Inter-Mountain Life Ins. Co., by A. S. Baker, asst. secy. & asst. treas.

Before U. S. Board of Tax Appeals

Stipulation amending assignments of error

Filed July 21, 1933

It is hereby stipulated, by and between counsel for the
36 parties hereto, respectively, that the assignments of error in the above-entitled cause be, and the same hereby are, amended to correct errors appearing therein as follows:

Assignment of error no. 1, substitute "Revenue Act of 1921" for "Revenue Act of 1926."

Assignment of error no. 2, substitute "calendar year 1922" for "calendar years 1925 and 1926", so that the assignments of error read as follows:

1. The Board erred in holding that the respondent's liability upon matured premium-reduction coupons was a reserve fund required by law within the meaning of section 245 (a) (2) of the Revenue Act of 1921.

2. The Board erred in permitting the respondent to deduct from its gross income of the calendar year 1922 four per cent of the mean at the beginning and end of each taxable year of its liability upon matured premium-reduction coupons.

(Sgd.) PAT MALLON,
Assistant Attorney General.
(Signed) E. BARRETT PRETTYMAN,
General Counsel, Bureau of Internal Revenue,
Attorney for Petitioner.
(Sgd.) GUY PATTEN,
Attorney for Respondent.

11d 7/19/33.

Before U. S. Board of Tax Appeals

Præcipe for record

Filed Nov. 11, 1933

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit, and deliver to the clerk of the United States Circuit Court of Appeals for the Tenth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Tenth Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the Board.

2. Pleadings before the Board,

37 (a) Amended petition, including annexed copy of deficiency letter.

(b) Answer to amended petition.

(c) Amendment to answer to amended petition.

3. Copy of minutes of the Board, showing opinion of Board as orally delivered.

4. Judgment and decision of the Board.

5. Petition for review, together with proof of service of notice of filing petition for review, and of service of a copy of petition for review, and stipulation amending petition for review.

6. Stipulation of facts.

7. Orders enlarging time for the preparation of the evidence and for the transmission and delivery of the record.

8. This praecipe. (Signed) E. BARRETT PRETTYMAN,
General Counsel, Bureau of Internal Revenue.

Service of a copy of the within praecipe is hereby admitted this 10 day of Nov. 1933. (Sgd.) A. R. Serven, attorney for respondent. 11d 10/10/33.

[Clerk's certificate to foregoing transcript omitted in printing.]

38, 39 [Minute entry of argument and submission, April 16, 1934, omitted in printing.]

40 In United States Circuit Court of Appeals, Tenth Circuit

No. 1003. Special June term, 1934

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

INTER-MOUNTAIN LILE INSURANCE COMPANY, RESPONDENT

On petition to review the decision of the United States Board of Tax Appeals

June 11, 1934

Edward H. Horton, Spec. Asst. to the Atty. Genl. (Frank J. Wideman, Asst. Atty. Genl., and Sewall Key, Spec. Asst. to the Atty. Genl., were with him on the brief) for the petitioner. Delos C. Johns (Charles E. McLaughlin, Homer H. Berger, and Abram R. Serven were with him on the brief) for the respondent.

Opinion

Before PHILLIPS, MCDERMOTT, and BRATTON, Circuit Judges

MCDERMOTT, *Circuit Judge*, delivered the opinion of the court:

Consistent with its many rulings on the point, the Board of Tax Appeals allowed respondent a deduction in its 1922 return
41 (Rev. Act 1921, § 245 (a) (2)) on account of reserve funds held to meet its liabilities to holders of matured unsurrendered and unpaid coupons attached to its twenty-payment life coupon nonparticipating policies. The Commissioner has petitioned to review.

Respondent is a Utah corporation. Nineteen coupons are attached to a policy which is fully paid in twenty years—one maturing each policy year after the first. Each is a promise to pay the amount thereof to the policyholder in event all premiums due at the maturity of the coupon have been paid. The insured may use any coupon to purchase additional paid-up insurance. Coupons which have been paid, or which have been used to purchase such additional insurance, are not here involved. We are here concerned only with matured but unsurrendered coupons.

Such coupons may be withdrawn in cash, with interest, at any time after maturity. But they need not be. The insured may, at his own option, use them to mature the policy at the end of twenty years for

$14,130 instead of $10,000, if he is then insurable; or at the end of twenty years, without medical examination, use them to purchase an annuity of $174.40 payable during his life; or, without medical examination, use the first fourteen coupons to mature the policy for the full $10,000 at the end of fifteen years instead of twenty. In short, the company has agreed to issue life insurance or an annuity to the policyholder in exchange for his coupons, at the option of the insured. The reserves in question are set up against that contingent liability to the policyholder. Until the insured elects to withdraw in cash, the company faces the contingent liability of their conversion into life insurance.

In his brief, the Commissioner concedes that the Utah statutes require reserves to be set up against the liabilities on such coupons. It is contended that such reserves are not the technical reserves contemplated by the taxing statutes.

The same argument, supported by the same authorities, was addressed to this court in Commissioner v. Great American Life Insurance Company, 70 F. (2d) 133. The present case is con-
42 cededly indistinguishable. Counsel, with commendable frankness, insists that our opinion in that case, similar opinions by the Third and Ninth Circuits, and the numerous decisions on the precise point by the Board of Tax Appeals, are all wrong. Perhaps they are, although counsel's brief serves only to fortify our belief in the soundness of these opinions. But if they are all wrong, the orderly way is to petition the Supreme Court for certiorari. The Supreme Court may not grant certiorari, it is true, in the absence of a conflict between the Board and any circuit. But we cannot decide a case contrary to our convictions in order to supply such a conflict.

Notwithstanding a proper reluctance to reexamine a point just decided after mature consideration, we have studied the briefs submitted. Nothing new is added to the arguments heretofore passed on. We are still of the opinion that a liability which may be converted into life insurance at the option of the insured, is one against which a technical reserve must be set up, if the laws of the states are to afford any security to those who invest their savings in life insurance.

The petition to review is denied.

43 In United States Circuit Court of Appeals

Judgment

June 25, 1934

Before Honorable Robert E. Lewis and Honorable Orie L. Phillips, Circuit Judges

This cause came on to be heard on the transcript of the record from the United States Board of Tax Appeals and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the petition for review of the decision of the said United States Board of Tax Appeals in this cause be, and the same is hereby, denied; and that the decision of the said United States Board of Tax Appeals in this cause be and the same is hereby affirmed.

Recital as to issuance of mandate

(On July 31, 1934, the mandate of the United States Circuit Court of Appeals, in accordance with the opinion and judgment of said court, was issued to the United States District Court.)

44 [Clerks certificate to foregoing transcript omitted in printing.]

45 In Supreme Court of the United States

Order extending time within which to apply for writ of certiorari

Filed Sept. 21, 1934

On consideration of the motion of counsel for the United States in the above-entitled case, and good cause therefor having been shown, it is now here ordered that the time within which a petition for writ of certiorari may be filed herein be and the same is hereby extended for a period of 60 days from September 25, 1934.

Dated this 21st day of September 1934.

J. C. McREYNOLD,

Associate Justice of the Supreme Court of the United States.

45½ [File endorsement omitted.]

46 Supreme Court of the United States

Order allowing certiorari

Filed January 7, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

47 (Endorsement on cover:) File No. 39, 165. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 537. Guy T. Helvering, Commissioner of Internal Revenue, petitioner, vs. Inter-Mountain Life Insurance Company. Petition for a writ of certiorari and exhibit thereto. Filed November 22, 1934. File No. 537 O. T. 1934.

U. S. GOVERNMENT PRINTING OFFICE: 1935